

IDEM POLICY

IMPLEMENTING AND SUPPLEMENTING TITLE 5 COMPLIANCE TRANSITION PROGRAM PER I.C.13-10-4-1

TITLE V AIR OPERATING PERMIT PROGRAM

Background

In 1994, the Indiana General Assembly adopted I.C. 13-10-4-1 which incorporates a transition compliance program for companies subject to the federal Title V air operating permit program and state permitting programs.

The intent of this program was to ensure that all operations at a source possess the requisite air permits and to encourage sources to submit all necessary applications. The 1994 law limits the liability faced by companies that may have facilities that, in the past, did not obtain the proper air construction and/or operating permit. A cap is placed on the enforcement fines that can be levied for certain lesser air emission changes that were built but not properly permitted before 1994.

Companies with the potential for air emissions greater than the applicability levels in the Title V air operating permit rules must submit an application for a Title V, a Federally Enforceable State Operating Permit (FESOP) or a Source Specific Operating Agreement (SSOA) during 1996. It is anticipated that hundreds of the nearly 1000 companies subject to this program will identify one or more facilities that require state construction and/or state operating permits under current state rules but do not have the proper permit. It is not anticipated that the large majority of these unpermitted facilities have significant air emissions. However, it is critical for the success of the Title V permit program to include all facilities and associated applicable requirements in the new operating permit.

IDEM is publishing this guidance document to clarify the policy and procedures we intend to follow in reviewing Title V, FESOP and SSOA applications this year with respect to any sources/facilities that do not yet have the appropriate state new source review permit. The purpose of this policy is to provide every incentive for sources to file a complete permit application, to establish a new, comprehensive baseline of regulated air emission sources across the state for all companies and to increase compliance with new source review permit requirements in the future.

Policy

The following policy applies to any company that voluntarily discloses an unpermitted source/facility as part of its required Title V, FESOP or SSOA permit application submitted during 1996. It reflects IDEM's implementation approach for the statutory compliance transition program set forth in I.C. 13-10-4-1 and describes the process IDEM will follow.

Based on information provided as part of the permit application, IDEM *may* initiate a formal enforcement action with a Notice of Violation pursuant to I.C. 13-7-11 if any one or more of the following conditions applies:

- 1) the unpermitted facility was constructed subsequent to January 1, 1994;
- 2) the unpermitted facility/project has actual air emissions that exceed the applicability thresholds for the Title V air operating permit program (100 tpy for criteria pollutants except VOC and NOx in Lake and Porter Counties where the threshold is 25 tpy). The applicant should submit verifiable and certified documentation identifying the actual air emissions for all unpermitted facilities for each of the past two calendar years;
- 3) the unpermitted facility/project required a federal new source review permit under 326 IAC 2-2 or 2-3;
- 4) the unpermitted facility does not comply with a significant applicable requirement;
- 5) the unpermitted facility poses a significant threat to health or the environment or poses a major problem for the quality of life in the community.

For the above situations, new source review will be conducted concurrent with review of the Title V, FESOP or SSOA permit application - a separate construction permit application is not necessary. Construction permit fees, unpaid air operating permit fees and the enforcement penalty consistent with I.C. 13-10-4-1 may be sought as part of the enforcement action.

For all other voluntarily disclosed unpermitted facilities, IDEM **WILL NOT** pursue a formal enforcement action.

For unpermitted facilities for which no formal enforcement action is initiated, IDEM will conduct new source review concurrent with the operating permit review. A separate construction permit application or fee will not be required. An enforcement penalty and/or unpaid operating permit fees will not be sought. To resolve the violation, IDEM will forward an acknowledgement document for signature by the applicant. The document will note that:

- * the company is aware that IDEM's informal enforcement action in this instance is related to the public's interest in a successful Title V air operating permit program;
- * the company is now aware of Indiana's New Source Review requirements;
- * the company is not aware of any other unpermitted facilities at its place of business;
- * the company stipulates that it will endeavor to comply with all new source review requirements in the future;

* the company acknowledges that future violations of new source review requirements will not be subject to any provisions of this policy.

Information on IDEM's new source review program will accompany the document to assist the company in future compliance with applicable permitting requirements.

A company with an unpermitted facility for which IDEM does not pursue a formal enforcement action may **ELECT** to request that IDEM formally pursue an enforcement action and enter into an agreed order to resolve the past violations of new source review requirements and to pay the civil penalties identified in I.C. 13-10-4-1. If requested, IDEM will enter into an agreed order consistent with I.C. 13-10-4-1.

A company with an unpermitted facility may **ELECT** to submit a separate construction permit and fee. IDEM will accept the fee and process the construction permit as expeditiously as practical, or concurrent with the operating permit application, at IDEM's discretion.

A company may voluntarily disclose an unpermitted facility prior to submittal of its Title V, FESOP or SSOA permit application during 1996. IDEM will process such disclosures consistent with the policy outlined above.

Many Title V/FESOP/SSOA sources have facilities that require, but do not have the proper state or federal construction permits. IDEM developed this interim policy in an effort to provide a final incentive for those sources and applicants to include all significant air emitting facilities and activities in their permit applications, regardless of their permit status.

EFFECTIVE DATES

This policy is effective immediately. The policy remains effective through December 13, 1996 OR until a later date approved by IDEM for submittal of an initial Title V related air operating permit application. Any violations of new source review requirements subsequent to January 1, 1994 are not within the purview of this policy. Failure of a company to voluntarily disclose any violations of new source review requirements as part of its initial Title 5 related air operating permit applications will preclude that company from claiming the relief provided in this policy.